vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3094 OF 2004
IN
SUIT NO.3007 OF 2004

Yasin Gulam Rasool ... Plaintiff

V/s.

Mohammed Haneef Gulam Rasool ... Defendant

NOTICE OF MOTION NO.1047 OF 2005
IN
SUIT NO.3007 OF 2004

Yasin Gulam Rasool ... Plaintiff

V/s.

Mohammed Haneef Gylam Rasool ... Defendant

And

Vittal & Ors. ... Respondents

Mr.S.U. Pandey for Plaintiff
Mr.M.P.S. Rao with Sunil Patel for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 14, 2006**

P.C.:

. Notice of Motion No.3094 of 2004 has been filed for appointment of Court Receiver in respect of the suit property. Notice of Motion No.1047 of 2005 has been taken out by the plaintiff for orders under Order 39 Rule 2A of the Civil Procedure Code. It is the plaintiff's contention that the Defendant has breached the order of injunction passed by this Court on October 20, 2004 in Notice of Motion No.3094 of 2004. The plaintiff has contended that the Defendant has inducted

some third party in the suit property described at Exhibit A to the plaint. The plaintiff has also contended that the Defendant has permitted Reliance Energy Ltd. to set up a substation although his gratuitous licence was terminated. It is in these circumstances that the order of 20.10.2004 granting the injunction came to be passed.

2. The learned Counsel appearing for the Defendant submits that the Defendant has not inducted any third party into the suit property after the injunction. He further states on instructions that there is no substation of Reliance Energy Ltd. installed on the open space in the suit premises after the injunction order was passed. He therefore, prays that a Commissioner be appointed so that the exact position regarding the possession of the suit property can be ascertained.

3. In my view, this application is made belatedly. There is no denial of the allegations in the affidavits in reply to the Motions and in these circumstances, there would be no need to appoint a Commissioner. However, with a view that no injustice is done to either party, it would be appropriate to appoint a Commissioner to record the true picture regarding the possession.

4. The Prothonotary and Senior Master shall accordingly depute a Commissioner to the suit property.

The Commissioner shall ascertain who is in possession of the suit property including structures thereon and open spaces as described in Exhibit A to the plaint. The Commissioner shall note as to whether there are any third parties inducted into the suit property and the date on which these parties came in possession of the premises. The Commissioner shall also note as to whether a substation for power supply has been erected on the suit property. The report to be submitted within two weeks from today. The Commissioner’s costs to be borne by the Defendant.

4. S.O. for two weeks.